No. 84-77

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IN THE

Supreme Court of the United States

October Term, 1984

JULIAN EMMETT TURNER, III,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA, OFFICE OF THE ATTORNEY GENERAL, GERALD L. BALILES, ROBERT C. COUSINS, ROBERT ADAMS, DEPARTMENT OF WELFARE, FLEMMING ROSE, JR., DEPARTMENT OF HEALTH, OTIS C. CROWTHER, JR., VIRGINIA STATE BAR, WALLER H. HORSLEY, MICHAEL L. RIGSBY, HERICO COUNTY, COMMISSIONER OF ACCOUNTS DAVID C. DORSET, DOES I through X inclusive,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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46 pp

QUESTIONS PRESENTED

Does an heir have standing to object to matters involving the estate of his ancestor?

Does judicial immunity preclude injunctive relief?

Does judicial immunity apply to purely ministerial functionaries?

Does a Federal District Court have to apply the law of a forum state with regard to state recognition of liability in cases involving pendant jurisdiction and diversity?

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IN THE

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JULIAN EMMETT TURNER, III,

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COMMONWEALTH OF VIRGINIA, OFFICE OF THE ATTORNEY GENERAL, GERALD L. BALILES, ROBERT C. COUSINS, ROBERT ADAMS, DEPARTMENT OF WELFARE, FLEMMING ROSE, JR., DEPARTMENT OF HEALTH, OTIS C. CROWTHER, JR., VIRGINIA STATE BAR, WALLER H. HORSLEY, MICHAEL L. RIGSBY, HERICO COUNTY, COMMISSIONER OF ACCOUNTS DAVID C. DORSET, DOES I through X inclusive,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered on March 29, 1984.

OPINIONS BELOW

On March 29, 1984 petitioner's petition for rehearing was denied by the United States Court of Appeals at the discretion of a panel consisting

of Judge Sprouse, Judge Chapman, and Judge Butzner. This same panel denied petitioner's original appeal on February 21, 1984. The Motion to Dismiss was denied by the District Court on August 31, 1983 by Judge Richard L. Williams. These orders are reprinted in appendix "A" located at pp. A-2 through A-3 of this petition.

JURISDICTION

The jursidiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C. sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment, 42 USCA 1981, 42 USCA 1982, 42 USCA 1983, 42 USCA 1985, 42 USCA 1986, 42 USCA 1988, 28 USCA 1331, 28 USCA 1332, 42 USCA 1343, set out at length in appendix "B" at pp. B-1 through B-6 of this petition.

This case further involves the doctrine of pendant jurisdiction and Virginia Code sections 26-2, 26-8, 26-8.1, 26-12, 26-14, 26-29, 26-32, 26-33, 64.1-172, set out at length in appendix "B" at pp. B-7 through B-11 of this petition.

STATEMENT OF THE CASE

Laura Gray Turner is the grandmother of the petitioner. The only other descendant of Laura Gray Turner is Julian Emmett Turner II, petitioner's father, who is a fugitive from justice wanted for attempted murder in Maryland. The whereabouts of petitioner's father are unknown.

Mrs. Turner died in a nursing home operated by Grace V. Rupp. Mrs. Rupp operated said nursing home in violation of a permanent injunction prohibiting her from operating a nursing home or any similar facility in the Commonwealth of Virginia.

The petitioner is a resident of California where he learned of the death of his grandmother from one Frances Patterson. Prior to that time, petitioner had lost contact with his grandmother who ceased writing to him.

Petitioner believes that the cessation of correspondence from his grandmother dates from the removal of petitioner's grandmother from her home. Moreover, those in control of the person of Laura Gray Turner did not inform the petitioner as to their course of action in placing Mrs. Turner in a nursing home.

The petitioner began to investigate the estate of his grandmother when there was no accounting of any of the personal property of Mrs. Turner. In particular, a painting dating back to the 1700's of a prominent family ancestor was missing from the estate. The only asset of the estate eventually accounted for was the home of Laura Gray Turner, an asset difficult to hide due to the practice of recording deeds.

Mrs. Turner died at 6140 Chamberlayne Road. The petitioner believes that this home was part of the estate of another family. The home which lead to the broad injunction against Mrs. Rupp was located at 1629 Westbrook Avenue. These facts lead the petitioner to the conclusion that Mrs. Rupp ran a chain of illegal nursing homes from which the estates of her clientel were looted.

The petitioner complained to the Department of Health and the Department of Welfare. The Department of Welfare has jurisdiction over homes for adults which are homes for the elderly containing four or more persons. The Department of Health regulates nursing homes of two or more patients receiving medical care.

The Department of Welfare refused to take action claiming that there were only three persons at 6140 Chamberlayne Road. The petitioner then pointed out that their answer was not responsive to the specific complaint about his grandmother who he believed constituted the forth person until her death. The petitioner pointed out that there was more than one home whose total occupancy should exceed four persons. The petitioner pointed out that the injunction included any similar home run in Virginia. Petitioner was ignored.

The Department of Health reported that though there were three persons on the premises, they were able to walk and not receiving medical care at the time. The petitioner pointed out that the complaint concerned his grandmother, and that a report of current conditions was not responsive. Petitioner specifically pointed out that Mrs. Rupp had accepted a disbursement for "special care of Laura Gray Turner in nursing home" in the amount of $502.50 from the estate of Laura Gray Turner. Again

the petitioner pointed to the existence of other homes and the broad wording of the permanent injunction against Grace Rupp. Finally, the petitioner asked why copies of his complaint had been forwarded to John Rupp (the bottom of the response by Robert Adams contained the notation "cc John Rupp"). The Department of Health did not respond to the petitioner's further complaint.

The John Rupp referred to in the Department of Health letter turned out to be John Rupp, Assistant Attorney General of the Commonwealth of Virginia. At the time of the letter there were only two Rupp's listed in the Richmond area telephone directory. Currently there are only seven listings in the Richmond area. Moreover, petitioner has heard reports that there was a John Rupp involved in a major hearing determining whether he would be able to build a nursing care facility in Chesterfield County. Petitioner believes that this was the same John Rupp and that said John Rupp is related to Grace V. Rupp.

The petitioner had further complaints about the executor of his grandmother's estate, F. Byron Parker, Sr. Mr. Parker failed to list the petitioner in the "List of All Heirs" as required by Virginia Code Section 64.1-134 when the petitioner had both a bequest under the will of Laura Gray Turner and was an alternative residuary beneficiary with the primary residuary beneficiary missing. Instead, Mr. Parker sent the petitioner a receipt form stating that the petitioner had received six thousand dollars when no such amount had not been disbursed and a waiver of claims forms together with letter telling the petitioner that unless the forms were signed, no disbursement would be made. Petitioner believes that such acts constitute the crime of attempted embezzlement.

The petitioner refused to sign either the receipt or the waiver provided by Mr. Parker. The petitioner complained to the Virginia State Bar. The Virginia State Bar replied that such receipts were customary, but in this case as since a check could serve as a receipt, signing a receipt was not necessary. Petitioner does not believe that the signing of a receipt for a check for six thousand dollars when in fact there has been no such disbursement is a custom anywhere.

The petitioner then complained to the commissioner of accounts, Mr. David Dorset. The petitioner complained about the disbursement to the nursing home operated in violation of the injunction, the conduct of the executor of the estate, and the absence of personal effects in the estate.

Mr. Dorset obtained the disbursement of the bequest under the will with interest which was paid solely from the estate. He then announced that as since the bequest was paid, the petitioner no longer had standing to complain about the administration of the estate.

The petitioner then informed the commissioner that he had standing as an heir with a bequest, as a descendant, as alternative residuary beneficiary where the primary beneficiary was a fugitive likely to be presumed dead by law after seven years, as the sole heir of the primary residuary beneficiary, and finally under Virginia Code section 26-29 which states:

> Who May Insist Or Object Before Commissioner—Any person who is interested, or appears as next friend for another interested in anysuch account may, before the commissioner, insist upon or object to anything which could be insisted upon or objected to by him, or such other, if the commissioner were acting under an order of a court of chancery for the settlement thereof made in suit to which he or such other was a party.

The petitioner insisted upon the removal of the executor of the estate for breach of fiduciary duty under Virginia Code sections 64.1-134, 64.1-139, and 64.1-178. The petitioner further demanded an accounting of the personal effects of Laura Gray Turner. In particular, the petitioner demanded an investigation into the missing Carter portrait missing from the estate.

Mr. Dorset responded with a mere letter prepared by Frances Patterson prepared at the offices of Mr. Parker. The letter did not account for the whereabouts of any of the personal effects complained of.

The petitioner informed Mr. Dorset that he still demanded an adequate accounting. Moreover, the petitioner informed the commissioner that it was his duty to hold a hearing and investigate the missing assets of the estate. Finally, the petitioner informed the commissioner of the procedure of removal of an executor by the process of the commissioner reporting his findings to the court who could then act to remove the executor. The specific Virginia Code sections are 26-2, 26-8, 26-8.1, 26-12, 26-14, 26-15, 26-16, 26-17, 26-18, 26-19, 26-29, 26-32, 26-33, and 64.1-172.

The commissioner responded by reversing his position on the standing of the petitioner to object to the accounting. The petitioner submitted a list of 325 interogatories to the commissioner. When there was no response to the interogatories submitted by the petitioner, the petitioner instituted the instant suit.

REASONS FOR GRANTING THE WRIT

I

AN HEIR HAS STANDING TO OBJECT TO MATTERS INVOLVING THE ESTATE OF THE HEIRS ANCESTOR

At the hearing, it was argued that since the petitioner had received his bequest under the will, he could suffer no damage and thus lacked standing to complain about the affairs of the estate.

The petitioner argued that he was directly interested in the estate by a direct bequest and was an alternative residuary beneficiary under the will. Moreover, the primary residuary beneficiary was a fugitive and that in all likelihood the estate would vest in the alternative residuary beneficiary by operation of law after a seven year period. As a further matter, the petitioner argued that he was the only heir available to come forward to complain about irregularities in the affairs of his grandmother, a blood relative.

Under Virginia law, the petitioner has standing without regard to bequest to object to the affairs of the estate. Under Virginia Code section 26-29 which states that, "[A]ny person who is interested, . . .", may insist upon or object to anything with regard to the estate complained about.

Here the petitioner has several interests involved. He has an interest as a descendant of the deceased. He has an interest as a specific beneficiary. He has an interest as sole heir to the primary residuary beneficiary. He has an interest as an alternative residuary beneficiary.

The argument that the petitioner has not been harmed is patently specious. The petitioner's grandmother was removed from his life by non-family members so that the petitioner did not know what had become of her. Finally, the loss of a family heirloom which had been in

the family since the middle 1700's which should naturally pass to the only child of the desceased's only child is a concrete unconscionable harm to the petitioner.

The petitioner asserts that the District Court erred upon the point of damages which precluded consideration of the applicability of the petitioner's arguments based upon *diversity*, denial of due process, and denial of equal protection of the laws under the Fourteenth Amendment and the Civil Rights Statutes which are set out at length in appendix "B" at pp. B-1 through B-6 of this petition. This is of particular importance as since 42 USCA 1982 specifically protects rights of inheritance. Here petitioner has been denied due process of law by the denial of the right to an accounting by the officer charged with guaranteering this right. Moreover, petitioner has been denied equal protection of the laws of Virginia because officers of the Attorney General charged with providing protection of the laws instead were engaged in a conspiracy to obstruct justice.

II

A PLEA-IN-ABATEMENT RESTING UPON JUDICIAL IMMUNITY IS INAPPROPRIATE WHEN APPLIED TO REQUESTS FOR INJUNCTIVE RELIEF

Although the petitioner asked for monetary relief against various state officials, the primary thrust of his complaint was for injunctive relief. Specifically, the petitioner asked for a special master to be appointed to investigate and account for the estate of Laura Gray Turner. The petitioner also demanded that an injunction be enforced against one Grace V. Rupp. These actions are necessary in order to procure equal protection of the laws in a hostile jurisdiction.

Judicial immunity does not prevent injunctive relief. The cases of *Ex parte Virginia*, 100 U.S. 339 (1880), and *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1975) are clear on this point. The District Court's ruling to the contrary is a fundamental error which precluded a decision on the merits of the instant case.

III

JUDICIAL IMMUNITY DOES NOT APPLY TO MINISTERIAL FUNCTIONS

The commissioner of accounts does not act as a decision maker. His duty is merely one of reporting to the courts of chancery. All decisions of action are made by the court through its equitable powers. Consequently, there is no chilling effect upon the discretion of the commissioner of accounts to protect. As judicial immunity serves only to protect the ability of the courts to make decisions, it is inappropriately applied when the function of making a decision is itself destroyed by the failure of a ministerial functionary to provide information necessary for the decision.

Under the law of Virginia, simply because one must determine facts, does not make a commissioner an actor with discretion. He must have the authority to determine whether to act or not. A commissioner of accounts has no such authority. He merely reports the facts he finds to the court as his duty. This principle is amply illustrated in the cases of *Early Used Cars, Inc. v. Province*, 218 Va. 605; *Prince William Co. v. Hylton Enterprises*, 216 Va. 582; and *Planning Commission v. Berman*, 211 Va. 774.

The court has pendant jurisdiction and diversity jurisdiction in the instant case. In such cases the court is obligated to apply the law of the forum state.

IV

VIRGNIA RECOGNIZES LIABILITY FOR INTENTIONAL AND GROSSLY NEGLIGENT TORTS OF ITS EMPLOYEES

The Commonwealth of Virginia recognizes liability for intentional and grossly negligent torts committed by its employees. *Crabbe v. School Board*, 209 Va. 356; *Elder v. Holland*, 208 Va. 15; *Sayers v. Bullar*, 180 Va. 222. The changes of clientel of Mrs. Rupp's establishment at 1629 Westbrook Avenue between the Temporary Restraining Order, Preliminary Injunction and the Permanent Injunction should have placed any ordinary person on notice that Mrs. Rupp was operating more than one establishment. Attorneys specializing in such law who fail to

have acted upon these facts should be found grossly negligent. Furthermore, there is reason to believe that failure to act was a result of attorneys with conflicts of interest acting intentionally (John Rupp).

Even when the Commonwealth of Virginia recognizes sovereign immunity for itself, it no longer extends its immunity to its employees. *James v. Jane*, 221 Va. 43.

Again the court has diversity and pendant jurisdiction and erred by failing to apply the law of the forum state.

CONCLUSION

WHEREFORE, petitioner respectfully prays that the court grant a writ of certiorari.

Respectfully submitted,

JULIAN EMMETT TURNER III

Petitioner

APPENDICES

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FILED
1983
CLERK, U. S. DIST. COURT
RICHMOND, VA.

JULIAN TURNER

Plaintiff.

v.

COMMONWEALTH OF VIRGINIA

Defendant.

Civil Action No. 83-258-R

ORDER

This matter comes before the court on defendant's motion to dismiss for failure to state a claim for which relief can be granted. For reasons stated from the bench, the defendant's motion is GRANTED. Should plaintiff desire to appeal this order he should indicate this desire in writing to the clerk of this court within thirty days.

Let the Clerk send a copy of this order to all counsel of record.

DATE: Aug. 29, 1983

Richard L. Williams
UNITED STATES DISTRICT JUDGE

BEST AVAILABLE COPY

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 83-1902

Julian Turner,

Appellant,

v.

Commonwealth of Virginia; Office of Attorney General; Gerald L. Baliles; Robert C. Cousins; Robert Adams; Department of Welfare; Flemong Rose, Jr.; Department of Health; Otis C. Crowther, Jr.; Va. State Bar; Waller H. Horsley; Michael L. Rigsby; Henrico County; Commissioner of Accounts, David C. Dorset and Does (1 through X inclusive),

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, District Judge. (C/A No. 83-258)

Submitted: January 3, 1984 Decided: February 21, 1984

Before SPROUSE and CHAPMAN, Circuit Judges, BUTZNER, Senior Circuit Judge.

(Gerald L. Baliles, Attorney General; John Rupp, Senior Assistant Attorney General; John A. Gibney, Jr., Assistant Attorney General; Joseph P. Rapisarda, Jr., County Attorney, for the Appellees.)

PER CURIAM:

Julian Turner appeals from the district court's denial of relief in his action against various officials of the Commonwealth of Virginia and subordinate entities. Turner instituted this suit claiming that the various defendants failed to oversee the probate of his grandmother's estate and that he was thereby harmed. This allegation fails to state a claim upon which relief can be granted. Turner has raised only issues of state law; he has shown no violation of a federally protected right.

As the facts and legal arguments are adequately set forth in the record and other materials before this Court, we dispense with oral argument. The judgment of the district court is affirmed.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
MAR 29 1984
U. S. Court of Appeals
Fourth Circuit

No. 83-1902

Julian Turner,

Appellant,

versus

Commonwealth of Virginia,
Office of Attorney General, et al

Appellees.

ORDER

Upon consideration of the appellant's pro se petition for rehearing,

IT IS ORDERED that the petition for rehearing is DENIED.

Entered at the direction of Judge Sprouse, Judge Chapman, and Judge Butzner.

FOR THE COURT,

/s/ William K. Slate, II
CLERK

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within the jurisdiction the equal protection of the laws.

* * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATUTES

§ 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

§ 1985. Conspiracy to interfere with civil rights

Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the

discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons or rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

§ 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

§ 1988. Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . .

§ 1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff. June 25, 1948, c. 646, 62 Stat. 830; July 25, 1958, Pub.L. 85-554, § 1, 72 Stat. 415.

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State, and foreign states or citizens or subjects thereof; and

(3) citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and sectin 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: *Provided furhter,* That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico, June 25, 1948, C. 646, 62 Stat. 930; July 26, 1956, C. 740, 70 Stat. 658; July 25, 1958, Pub.L. 85-554, § 2, 72 Stat. 415; Aug. 14, 1964, Pub.L. 83-439, § 1, 78 Stat. 445.

§ 1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

June 25, 1948, c. 646, 62 Stat 932; Sept. 3, 1954, C. 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, Pub.L. 85-315, Part III, § 121, 71 Stat. 637.

§ 26-2. Commissioners to examine and report on bonds and whether fiduciaries should be removed.—When any fiduciary required to do so, except a sheriff or other officer, shall have filed with a commissioner an inventory or shall have laid the statement required by § 26-17 before a commissioner, the commissioner shall examine whether such fiduciary has given such bond as the law requires, and whether it is in a penalty, and with sureties sufficient. Any commissioner of the court in which the order was made conferring on such fiduciary his authority, shall, at any time before such statement is laid before a commissioner, upon the application of any person who is interested or appears as next friend of an infant interested, after reasonable notice to such fiduciary, examine into any of such matters, or inquire whether security ought to be required of a fiduciary who may have been allowed to qualify without giving ir, or whether, by reason of the incapacity, misconduct, or removal of any fiduciary from this State, or for any other cause, it is improper to permit the estate of the decedent, ward, or other person, to remain under his control. The result of every such examination and inquiry shall be reported by the commissioner to the court by which he is appointed. (Code 1919, § 5416; 1966, c. 340; 1974, c. 156.)

§ 26-8. Commissioners of accounts.—The judges of each circuit court shall appoint so many commissioners of accounts, as may be requisite to carry out the duties of that office, who shall be removable at pleasure and who shall have a general supervision of all fiduciaries admitted to qualify in such court or before the clerk thereof and make all ex parte settlements of their accounts. The person appointed as a commissioner of accounts shall be a discreet and competent attorney-at-law; however, if no such attorney be found willing to serve, the court shall appoint some other discreet and proper person. Any individual holding the office of commissioner of accounts upon July one, nineteen hundred seventy-three, shall continue therein at the pleasure of the court or until his retirement or death.

In the event more than one such commissioner is appointed, each commissioner shall maintain his own office and keep his own books, records and accounts. He shall retain the power of supervision over every account, matter or thing referred to him until his final account is approved, unless he shall resign, retire or be removed from office, in which case his successor shall continue such duties. (Code 1919, § 5401; 1946, p. 324; 1966, c. 329; 1973, c. 544.)

§ 26-8.1. Subpoena powers of commissioners, assistants and deputies.—Commissioners of accounts, assistant commissioners of accounts and deputy commissioners of accounts shall have the power to issue subpoenas to require any person to appear before them. Such commissioners shall not have the power to punish any person for contempt for failure to appear, but may certify the fact of such nonappearance to the circuit court, which may impose penalties for civil contempt as if the court had issued the subpoena. (1974, c. 126.)

§ 26-12. Inventories to be filed with commissioners.—Every personal representative, guardian, curator or committee, shall, within four months after the date of the order conferring his authority, return to the commissioner or commissioners of accounts, under his oath and in proper form, an inventory of all the personal and real estate which is under his supervision and control, and all other property of the estate of which he has knowledge; and shall, within four months, after any other such estate shall come to his possession or knowledge, return to such commissioner a further inventory thereof.

In listing such property the fiduciary shall place the market value on each item thereof unless appraisers are appointed under § 64-126 [§ 64.1-133] in which case such appraised values shall be used. The market value shall be determined as of the date of death if a decedent's estate, and if not, as of the date of qualification.

Any reasonable expense incurred in determining such values shall be allowable as a cost of the administration of such estate. (Code 1919, § 5403; 1932, p. 337; 1966, c. 337; 1973, c. 544.)

§ 26-14. Commissioners to inspect and file inventories with clerks.—The commissioner shall inspect all inventories returned to him by fiduciaries, see that they are in proper form, and, within ten days after they are respectively received and approved by him, deliver them to the clerk of the court, to be recorded as required by law. (Code 1919, § 5403; 1932, p. 337.)

§ 26-15. Accounts of sales under deeds of trust, etc.—When sale is made under any recorded deed of trust, mortgage or assignment for benefit of creditors, otherwise than under a decree, there shall, within four months after the sale, be returned by the trustee to the commissioner of accounts of the court wherein the instrument was first recorded

an account of sale. The commissioner shall state, settle and report to the court an account of the transactions of such trusttee, and the same shall be recorded as other fiduciary reports. Any trustee failing to comply with this section shall forfeit his commissions on such sale, unless such commissions are allowed by the court. If the commissioner of accounts of the court wherein an instrument was first recorded is advised in writing by a party in interest that an account as required by this section has not been filed, the commissioner and the court shall proceed against the trustee in like manner and impose like penalties as set forth in § 26-13, unless such trustee is excused for sufficient reason. If after a deed of trust is given on land lying in a county, and before sale thereunder, the land is taken within the limits of the incorporated city, the returns of the trustee and settlement of his accounts shall be before the commissioner of accounts of such city. (Code 1919, § 5404; 1946, p. 325; 1966, c. 333.)

§ 26-16. Recordation of inventories and accounts of sales. — Every inventory and account of sales returned under §§ 26-12 and 26-15 shall be recorded by the clerk in what are known as will books, and indexed as required by § 17-59. (Code 1919, § 5405.)

§ 26-17. Annual settlement of fiduciaries' accounts. — A statement of all money and other property which any personal representative, guardian, curator, committee, testamentary trustee, trustee under § 37-141 [§ 37.1-134] and receiver under § 55-44, has received, or become chargeable with, or has disbursed, within one year from the date of the order conferring his authority, or from the date of the trust or within any succeeding year, together with the vouchers for the disbursements, and a statement of cash on hand or in bank and all investments held at the terminal date of the account, shall, within four months after the end of every such year, be exhibited by him before the commissioner of accounts of the court wherein the order conferring his authority was made, or of the court wherein the instrument creating the trust was first recorded; and the commissioner shall state, settle and report to the court an account of the transactions of such fiduciary, as provided by law. Every such fiduciary shall also, at the request of the commissioner to whom he is required to exhibit the foregoing statements, exhibit to the commissioner the securities held by him together with a statement of every bank in which cash is held at the terminal date of the account.

The commissioner shall enter in his record book, in a separate column, the date of each settlement of fiduciary accounts made by him. (Code 1919, § 5408; 1936, p. 250; 1946, p. 325; 1960, c. 73.)

§ 26-18. Failure to make settlement; enforcement. — If any such fiduciary fail to make any such exhibit, as required by the preceding section (§ 26-17), the commissioner and the court shall proceed against him in like manner, and the court shall impose the same penalty, unless such fiduciary is excused for sufficient reason, as is herein provided in cases in which fiduciaries fail to return inventories of their respective estates. Every commissioner shall file with his court or judge, and a duplicate in the clerk's office, in the months of April and October, a list of all fiduciaries required to make periodic settlements who have failed to make such settlements as required, and, at the same times, with like duplicate with the clerk, a report of all fiduciary accounts which have been before him for more than three months and which remain unsettled. Upon the filing of this list the clerk shall issue a summons against each fiduciary shown thereon returnable to the first day of the next term of the court and the court shall take action against such fiduciary in accordance with § 26-13 for failure to file inventories. (Code 1919, § 5408; 1936, p. 250; 1946, p. 325.)

§ 26-19. When fiduciaries to forfeit their commission, etc. — If any such fiduciary wholly fail to lay before such commissioner a statement of all matters required in § 26-17 together with all other statements and items therein required for any year, within four months after its expiration, and, though a statement be laid before the commissioner, yet if the fiduciary be found chargeable for that year with any money or other property, not embraced in the statement, he shall have no compensation for his services during such year, nor commission on such money or other property unless allowed by the commissioner for good cause shown; the commissioner's action in such case shall be subject to review by the court on exceptions by any interested person. This section shall not apply to a case in which a fiduciary has laid a statement of his accounts within such year before a commissioner in chancery who in a pending suit has been ordered to settle his account. (Code 1919, § 5409; 1946, p. 326.)

§ 26-32. Where filed; what to be done with vouchers. — The commissioner shall file the report in the office of the court by which he is appointed, as soon as practicable after its completion, and shall, with his report, return such of the vouchers or evidence before him as any person interested may desire him to return, or as he may deem proper. (Code 1919, § 5427.)

§ 26-33. Exceptions; examination, correction and confirmation. — The court, or judge in vacation, after fifteen days from the time the report has been filed in its office, shall examine such exceptions as have been filed. It shall correct any errors which appear on the exceptions and to this end may commit the report to the same or another commissioner, as often as it sees cause; or it may cause a jury to be empaneled to inquire into any matter which, in its opinion should be ascertained in that way; or it may confirm the report in whole or in a qualified manner, and shall certify in the order that it has made a personal examination of the exceptions.

If no exceptions have been filed, the report shall stand confirmed on the day next following the expiration of the period of fifteen days after the day on which the report was filed in the clerk's office. (Code 1919, § 5428; 1922, p. 873; 1928, p. 23; 1940, p. 614; 1944, p. 107; 1966, c. 335.)

§ 26-34. Effect of confirmation. — The report, to the extent to which it may be so confirmed by an order of the court or judge upon exceptions filed, or in whole when confirmed by lapse of time without exceptions, as provided in the preceding section (§ 26-33), shall be taken to be correct, except so far as it may, in a suit, in proper time, be surcharged or falsified; but no person who was a party to exceptions filed to the report shall bring a suit to surcharge or falsify the report, and in such case the action of the court on the report shall be final as to such party, but may be appealed from as in other suits in equity. (Code 1919, § 5429; 1932, p. 554; 1944, p. 107.)

§ 64.1-172. Report of debts, when and how made. — The commissioner may adjourn from time to time for receiving such proof and shall, within sixty days from the time first appointed for receiving such proof or the last adjournment of any hearing thereon, make out an account of all such debts or demands as may appear to him to be sufficiently proved, stating separately those of each class. (Code 1950, § 64-162; 1966, c. 335; 1968, c. 656.)

§ 64.1-134. List of heirs. — Every personal representative of a decedent, whether such decedent died testate or intestate, shall, at the time of his qualification, furnish the court or clerk before which or before whom he qualifies and the clerk of court of any city or county wherein deeds are recorded, in which the decedent died seized of any real estate, a list containing his name, with his post-office and street address, if any, and:

(1) The names and, as far as possible, the ages and addresses of the heirs of his decedent, if intestate; or, if his decedent died testate, the names, ages and addresses of those persons who would have been the decedent's heirs had he died intestate; and

(2) The degree of kinship of each to the decedent, accompanied by affidavit that he has made diligent inquiry as to such names, ages and addresses and that he believes such list to be true and correct.

The clerk shall record such list in the will book and index in the name of the decedent as grantor and the heirs as grantees. Such list so made and recorded shall be prima facie evidence of the facts therein stated. The cost of recording such list shall be deemed a part of the cost of administration and be paid out of the estate of the decedent. Such personal representative shall not receive any compensation for his services until such list is filed unless he files an affidavit before the commissioner of accounts that the heirs are unknown to him and that after diligent inquiry he has been unable to ascertain their names, ages or addresses, as the case may be. (Code 1950, § 64-127; 1954, c. 182; 1968, cc. 384, 656.)

§ 64.1-139. Duty of every personal representative. — Every personal representative shall administer, well and truly, the whole personal estate of his decedent. (Code 1950, § 64-131; 1968, c. 656.)

§ 64.1-178. When fiduciaries are protected by refunding bonds. — If any personal representative pay any legacy given by the will or distribute any of the estate of his decedent and there be filed in the proper clerk's office a proper refunding bond for what is so paid or distributed, with security therein sufficient at the time of taking it, such personal representative shall not, on account of what is so paid or distributed, be personally liable for any debt or demand against the decedent, whether it be of record or not, unless, within six months from his qualification or before such payment or distribution, he shall have had notice of such debt or demand; but if any creditor of the decedent thereafter establish his debt or demand by judgment or decree therefor or by its being allowed in a commissioner's report which is confirmed, a suit may be maintained on such

refunding bond, in the name of the obligee, or his personal representative, for the benefit of such creditor, and a recovery shall be had thereon to the same extent that would have been had if such obligee or his personal representative had satisfied such debt or demand. (Code 1950, § 64-168; 1968, c. 656.)